

Customer G and Lumo Energy – Decision and Reasons

**Application of section 48A of the Gas Industry Act 2001 (Vic) –
Compensation for wrongful disconnection**

15 April 2020

Commissioners:

Ms Kate Symons, Chairperson,
Mr Simon Corden, Commissioner,
Mr Sitesh Bhojani, Commissioner, and
Ms Rebecca Billings, Commissioner.

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Application of section 48A of the Gas Industry Act 2001 (Vic) – Compensation for wrongful
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Referral from EWOV

1. The Energy and Water Ombudsman (Victoria) (the ombudsman) has made a referral for decision to the Essential Services Commission (the commission), regarding a complaint by (*name redacted*) (Customer G).
2. The complaint is about the application of section 48A of the Gas Industry Act 2001 (Vic) (the Act) to a disconnection by Lumo Energy Australia Pty Ltd (Lumo Energy) of the gas supply to Customer G's premises at (*address redacted*) (the premises). The gas supply to the premises was disconnected from 8:40am on 26 March 2018 to 9:00pm on 2 May 2018, a period of 37 days, 12 hours and 20 minutes.
3. Customer G was signed up to an account with Lumo Energy as a result of a door-to-door sale by one of Lumo Energy's agents. It is unknown whether this agent was a direct employee of Lumo Energy or was contracted via a third party provider. Customer G said she believed she had cancelled this account in accordance with the 10 day cooling off period. However, Customer G did not provide further information in support of this and Lumo Energy had no record of a request by Customer G to cancel her account.
4. Customer G also refused to pay any outstanding bills on the basis that she had not received some of them and was concerned that the correct rates and concessions had not been applied. Lumo Energy made various attempts to make telephone contact to discuss the complaint with Customer G who either requested a call back, or otherwise did not answer the call. Lumo Energy made one email attempt to contact Customer G requesting a response by a certain date, to which she did not reply. Lumo Energy then arranged for the disconnection of the premises.
5. Clause 116(1)(b) of the Energy Retail Code prohibits disconnection where a complaint that is related to the reason for the disconnection remains unresolved.
6. Customer G called Lumo Energy eight days after the disconnection occurred. Lumo Energy arranged to call Customer G that afternoon to arrange reconnection but Customer G did not answer this call. Lumo Energy argued that, because Customer G did not respond to its attempt to contact her to re-establish the connection, the prescribed amount should be capped under section 48A(1A) of the Act.
7. The ombudsman acknowledged that Lumo Energy demonstrated compliance with clauses 111(1)(c), 111(1)(d) and 111(1)(e) of the code, which require a retailer to give a customer a reminder notice, a disconnection warning notice, and use its best endeavours to contact the

customer prior to arranging disconnection for not paying a bill. The commission acknowledges that compliance with these clauses is not in dispute.

8. The ombudsman has requested the commission to advise on the following questions in relation to the application of section 48A of the Act to the factual circumstances set out in the referral:
 - (a) Whether Lumo Energy met the minimum standard of conduct for compliance with the Energy Retail Code, version 11a (the code); and
 - (b) Whether Lumo Energy failed to meet the terms and conditions of its contract with Customer G that specified the circumstances in which the supply of gas to those premises be disconnected.

Issues for decision

9. The issues for decision by the commission are whether Lumo Energy breached a condition of its gas retail licence regarding an obligation to make a prescribed payment to Customer G in circumstances where:

- (a) Lumo Energy disconnected the supply of gas to the premises of Customer G; and
- (b) Lumo Energy failed to comply with the terms and conditions of the contract specifying the circumstances in which the supply of gas to those premises may be disconnected.

If so, then under section 48A(3) of the Act, Lumo Energy was obliged to make the prescribed payment to Customer G as soon as practicable after the supply of gas was reconnected to Customer G's premises.

10. In order to make a decision in this case, the commission must consider the following issues:

- (a) Was Lumo Energy required to comply with the Energy Retail Code (version 11a) (the code) as a condition of its contract with Customer G?
- (b) At the time that Lumo Energy arranged for the disconnection of the gas supply to Customer G's premises, did her complaint via the ombudsman meet the following criteria under clause 116(1)(b) of the code:
 - (i) The complaint was directly related to the proposed reason for disconnection;
 - (ii) The complaint was made to Lumo Energy under its standard complaints and dispute resolution procedures; and
 - (iii) The complaint remained unresolved.
- (c) If so, did Lumo Energy resolve Customer G's complaint in accordance with Lumo Energy's Complaint and Dispute Resolution Policy, prior to arranging for the disconnection of the gas supply to Customer G's premises?
- (d) If not, is compensation payable to Customer G?
- (e) If so, what is the amount of compensation payable to Customer G in the circumstances of this case?

Submissions

Customer G's submissions

11. The ombudsman's referral set out Customer G's statement about the matter. Customer G stated that:
 - (a) A Lumo Energy consultant came to Customer G's house and invited her to sign up with them. At that time:
 - (i) The consultant advised that she could sign up and then cancel the account within a week as he needed the sale.
 - (ii) Customer G agreed to sign up with Lumo Energy. The consultant informed her that the transfer of her account would not go through as she was not the authorised tenant on the bills for the premises.
 - (b) Customer G called Lumo Energy to cancel the account (no date provided for this call). However, Customer G later noticed that the bills began to be deducted from her credit card account.
 - (c) Customer G started receiving reminder notices advising her the account had not been paid. She called Lumo Energy and advised them she had cancelled her account.
 - (d) Customer G's gas supply was disconnected around April 2018.
12. The commission invited Customer G to provide any information and documents to which she considered the commission should have regard in relation to the referral. Customer G provided information to the commission which was generally consistent with her statement in the ombudsman's referral.

Lumo Energy's submissions

13. The commission invited Lumo Energy to provide any information and documents to which it considered the commission should have regard in relation to the referral. Lumo Energy provided further information and made the following submissions for the commission's consideration:

Lumo Energy made submissions about its compliance with the code

14. Lumo Energy stated that it does not generally dispute the chronology of events in the ombudsman's referral. However, Lumo Energy disagrees with the ombudsman's position that it did not comply with the minimum standards of conduct required in arranging for the

disconnection of the gas supply to Customer G's premises. Further, Lumo Energy is of the view it demonstrated compliance with the relevant provisions of the code that the ombudsman seeks to rely on in this matter, namely clauses 29(3) and 116(b).

15. In relation to clause 29(3) of the code, Lumo Energy submitted that this clause alone "does not give rise to an obligation for a retailer to make a wrongful disconnection payment", and, further, that "it is not a term or condition specifying the circumstances in which the supply of gas to a premises may be disconnected". In support of its position, Lumo Energy relied on a previous commission decision made on 27 June 2018 in the matter of *Customer N and EnergyAustralia*¹.
16. In relation to clause 116(b) of the code, Lumo Energy submitted its belief that Customer G had no open complaints, and that any historic complaints were determined to have been closed at the time Lumo Energy arranged for disconnection of her gas supply. Lumo Energy stated that Customer G "displayed a persistent unwillingness to talk to Lumo's consultants or reach a meaningful resolution to their complaint".
17. Lumo Energy submitted that it made attempts to contact Customer G in response to her complaint via the ombudsman on 18 and 19 January 2018, both of which were unsuccessful. Further, that Lumo Energy emailed Customer G on 23 January 2018 requesting that she "contact Lumo by 29 January 2018 in order to discuss the matter raised by the ombudsman or else the complaint will be considered as closed". Lumo Energy stated that Customer G's complaint "was closed in line with our complaint handling procedures as no contact was received from Customer G by the aforementioned date".

Lumo energy made submissions about the calculation of a prescribed amount

18. Lumo Energy submitted that if the commission determine that Lumo Energy breached their obligations under the code, the wrongful disconnection amount should be limited to the prescribed capped amount of \$3,500 under section 48A(1A) of the Act. While Lumo Energy acknowledge that Customer G contacted them within 14 days of the disconnection, they stated that their capacity to arrange reconnection immediately was "hindered by her unavailability to continue with the discussion required for reconnecting the supply".

¹ Essential Services Commission 2018, Customer N and EnergyAustralia – Decision and Reasons: Application of section 48A of the Gas Industry Act 2001 (Vic) Compensation for wrongful disconnection, 27 June

Relevant facts

19. The commission considered the ombudsman's referral and Lumo Energy's submissions. The relevant facts are set out below.

Circumstances leading to the disconnection

20. On 6 March 2017, Customer G entered into a contract for Lumo Energy to supply both gas and electricity (dual fuel account) to her premises.
21. The initial four bills issued by Lumo Energy were paid by direct debit from Customer G's credit card.
22. On 2 August 2017, a direct debit from the account was dishonoured. Bills subsequently issued by Lumo Energy to Customer G were not paid.
23. On 6 November 2017, Customer G called Lumo Energy after receiving a message regarding disconnection of her energy supply due to unpaid bills. During this call:
 - (a) Customer G said she remembered signing up with Lumo Energy, however she had called and cancelled this account.
 - (b) Customer G said that she had not received any bills from Lumo Energy and requested copies of all bills issued to her so that she could check the rates she had been charged and whether Lumo Energy had her concession card details.
 - (c) Lumo Energy informed Customer G that they had her concession card with an expiry of March 2017. Customer G told Lumo Energy that she had a concession card that was valid until March 2019.
 - (d) Lumo Energy informed Customer G of the outstanding amount of her energy bills and the average cost per month. Customer G responded that this was much too high.
 - (e) Lumo Energy told Customer G to contact the retailer she thought she was with to check the status of her accounts with them and why they were closed, which Customer G said she would do.
 - (f) Lumo Energy told Customer G to call back after she had contacted the respective retailer and they would be able to work things out.
24. On 9 November 2017, Lumo Energy called Customer G to discuss her account. During this call:

- (a) Lumo Energy asked Customer G to confirm her details for privacy purposes. Customer G declined to confirm her details as she was not comfortable disclosing personal information.
 - (b) Lumo Energy told Customer G that she should call them whenever she had time as it was “very important to speak to you”.
 - (c) Customer G asked if this call was about her call to Lumo Energy a few days prior.
 - (d) Lumo Energy told Customer G they could not discuss her account without verifying her details due to Australian privacy laws. However, if she was not comfortable with that she should call Lumo Energy back to discuss.
 - (e) Customer G asked if Lumo Energy could call her back at around 2pm. Lumo Energy told Customer G they would not be able to guarantee a time to call her back and that she should call them whenever she had time.
25. On 9 November 2017, Lumo Energy made the following notes on Customer Gs account:
- emailed account to (Officer K) to listen to the call recording as per call on the 06.11.2017 customer was disputing sign up.*
- Have listened to call. Confirming same customer on phone.*
26. On 21 November 2017, Lumo Energy called Customer G, who requested a call back around the same time the next day. Lumo Energy said they could not call back as they were on an automated dialler, but that she could call them back.
27. On 8 December 2017, Lumo Energy called Customer G regarding an outstanding balance on her energy account. During this call:
- (a) Lumo Energy confirmed the outstanding amount was \$719.79.
 - (b) Customer G told Lumo Energy that she had put a complaint with their resolutions team to look into this as she was not supposed to be with Lumo Energy.
 - (c) Customer G said that she has not received any bills from Lumo Energy and had spoken with someone over a month ago about this. Customer G said that her credit card had been deducted for some bills in the beginning, but that she had cancelled that card which is why the bills started piling up.
 - (d) Customer G said that the last time she had spoken with Lumo Energy she was sent the latest bill, and that she needed all her bills re-sent to see if she was being billed correctly. Customer G also said she was entitled to a number of concessions and asked whether they were applied correctly.

- (e) Customer G said that Lumo Energy shouldn't have her account, and that no one had called her to discuss this.
 - (f) Lumo Energy said they would send Customer G the bills since the start of her account in March 2017. Customer G said that she would go through all the bills to see if she was billed correctly or not.
 - (g) Lumo Energy suggested Customer G could call customer service to make a complaint. Customer G said she had already done that.
 - (h) Customer G said that if Lumo Energy did not rectify her complaint she would go to the ombudsman.
28. On 2 January 2018, Lumo Energy called Customer G and left a voicemail requesting she contact them regarding "an urgent matter regarding your account".
29. Customer G's gas supply was disconnected on 15 January 2018. Customer G called Lumo Energy the same day and her gas supply was reconnected on 18 January 2018. The circumstances of this disconnection were not subject to the ombudsman's referral.
30. On 17 January 2018, Customer G called the ombudsman to escalate her complaint with Lumo Energy. The ombudsman raised an assisted referral of Customer G's complaint with Lumo Energy on the same day.
31. On 18 and 19 January 2018, Lumo Energy made the following notes on Customer G's account:

No option to leave a Vm

Customer is disputing sign up, however, we have reviewed the sign up call, customer has agreed to T&C, provided EIC and Direct Debt Details

All coro [sic] accepted to be sent via email during conversation.

32. On 23 January 2018, Lumo Energy sent an email to Customer G in the following terms:

I write in acknowledgement of complaint (2018/no. & 2018/no.) raised to LUMO Energy via the Energy and Water Ombudsman of Victoria.

Lumo Energy has attempted to contact you [sic] over the phone; however, we have been unsuccessful in our attempts.

To resolve your complaint and facilitate a resolution LUMO Energy requires you to contact us to discuss your concerns.

Please feel [sic] contact LUMO Energy's Retailer Compliance Team directly on 1300 763 499 during business hours, 9.00am – 6.00pm Monday to Friday to discuss the complaint further.

If a response is not received by 29 January 2018 we will consider the matter closed for non-participation. Standard collection will commence after this date.

We thank you for your time and understanding.

33. On 30 January 2018, Lumo Energy made the following notes on Customer Gs account:

Customer has not responded to LUMO Energy contact attempts.

Closing complaint as we need to discuss the matter directly with the customer to resolve.

34. Lumo Energy also recorded the complaint status as closed.

35. Lumo Energy made further call attempts to Customer G during February and March 2018. Customer G either requested that Lumo Energy call her back another time or did not answer the call.

Lumo Energy arranged for the disconnection

36. On 12 March 2018, Lumo Energy raised a service order for disconnection of the gas supply to occur on 26 March 2018.

37. On 26 March 2018, at 8:40am, the gas supply to Customer G's premises was disconnected.

38. On 3 April 2018, Customer G called Lumo Energy in relation to the disconnection of the gas supply to her premises. During this call:

(a) Customer G said she was not supposed to be with Lumo Energy as she was a tenant and the service is provided by the landlord and should be under his name.

(b) Customer G requested that Lumo Energy not disconnect any other services and she would sort this out with the ombudsman.

(c) Lumo Energy confirmed they had received her complaint via the ombudsman. However, as she had not responded to their attempts to contact her they had closed the case. Customer G stated she had not received any contact from Lumo Energy

(d) Lumo Energy informed Customer G of their unsuccessful attempts to contact her, and the email that was sent on 23 January 2018. Customer G stated that she did not receive the email but that she might have received some calls. Customer G informed

Lumo Energy that she had been unable to discuss the matter due to a family emergency in February 2018.

- (e) Customer G requested that her gas supply be reconnected.
 - (f) Lumo Energy informed Customer G that her bills have not been paid from 10 August 2017 to 13 March 2018 and that she could pay the outstanding amount and they would raise a service order for the reconnection. Customer G replied, "I'm not paying anything".
 - (g) Customer G queried whether her electricity supply would also be disconnected in the next two days. Lumo Energy confirmed that this may occur in the next week or two but not in the next two days.
 - (h) Customer G asked Lumo Energy to re-open her complaint made via the ombudsman. Lumo Energy agreed to call Customer G back around 3pm to discuss this, as she needed to end the call at that time.
39. Lumo Energy later called Customer G back and informed her that to reconnect her gas supply they would need to raise a service order before 1.30pm. Customer G agreed for Lumo Energy to call her at 1pm instead of 3pm that day.
40. Lumo Energy made a further call to Customer G later that day and left a voicemail requesting that she contact them urgently.

Lumo Energy arranged for the reconnection

- 41. On 1 May 2018, Customer G contacted the ombudsman again and an investigation was registered.
- 42. On 2 May 2018, Lumo Energy raised service order for reconnection of the gas supply. The gas supply to Customer G's premises was reconnected at 9:00pm the same day.

Relevant obligations

43. In this matter, the relevant obligations arise from the Act, Lumo Energy's contract with Customer G (the contract), Lumo Energy's Complaint and Dispute Resolution Policy (the complaint policy), Lumo Energy's gas retail licence and the code.
44. The relevant obligations from the Act are:
- (a) Section 48A(1) of the Act provides that it is a condition of a gas retail licensee's licence that the licensee must make a payment of the prescribed amount to a relevant customer if the licensee disconnects the gas supply to the premises of that customer and fails to comply with the terms and conditions of its contract specifying the circumstances in which the gas supply to those premises may be disconnected (the statutory licence condition).
 - (b) Section 48A(1A) of the Act provides that if the relevant customer did not notify the licensee of the disconnection within 14 days after the disconnection, the maximum payment under a condition under subsection (1) is the prescribed capped amount.
 - (c) Section 48A(3) of the Act requires the licensee to make any payment under subsection (1) as soon as practicable after the gas supply was reconnected to the premises of the relevant customer.
 - (d) Section 48A(5) of the Act provides that the prescribed amount was \$500 for each whole day that the gas supply was disconnected and a pro rata amount for any part day, and that the prescribed capped amount was \$3,500.
45. The relevant obligations from the contract are:
- (a) Clause 14.1 of the contract stated, in part:

When can we arrange for Disconnection?

Subject to us satisfying the requirements in the Regulatory Requirements, we may arrange for the disconnection of your Premises if:

- (a) you do not pay your bill by the Due Date and you:
 - (i) fail to comply with the terms of an agreed Payment Plan; or
 - (ii) if you are a Residential Customer, do not agree to an offer to pay the bill by instalments, or having agreed, you fail to comply with the instalment arrangement;

...

(e) we are otherwise entitled or required to do so under the Regulatory Requirements or by law.

(b) Clause 25 of the contract stated, in part:

Regulatory Requirements means all rules, regulations, codes, statutes, guidelines, licences, legislation, orders in council, tariffs, proclamations, directions or standards applicable where Your Premises is located that relate to the supply of electricity, gas or both as the case may be, including:

...

(b) in Victoria: the Energy Retail Code published by the Essential Services Commission of Victoria.

46. The relevant obligations from the complaint policy are:

(a) Section titled "Complaint Management Procedures" stated, in part:

Receiving Complaints

Internal

Customers or prospective customers may lodge a complaint directly with Lumo Energy through the following channels:

Telephone 1300 825 852

...

Email info@lumoenergy.com.au

Website www.lumoenergy.com.au

Mail Lumo Energy Australia

...

External

Alternatively customers or prospective customers may lodge a complaint about Lumo Energy with the relevant Ombudsman:

Victoria

Energy and Water Ombudsman (Victoria) Telephone: 1800 500 509 Website: www.ewov.com.au

...

Resolving Complaints

...	
Engage and investigate	Employees will take ownership of each complaint they receive to investigate. Through transparent, fair and open stakeholder engagement, Employees will obtain the information required to complete the investigation.
Resolve	Employees will take ownership of each complaint they receive to [sic] and take proactive steps to investigate and resolve it, at the first point of contact where feasible.
Escalate	Employees will escalate the complaint where the customer requests it, or if the customer remains dissatisfied with the resolution offered at their first point of contact. Employees will provide contact details of the relevant Ombudsman as required.
...	
Communicate	Employees will provide regular updates to the customer while their concerns are being investigated. Customers should be informed of all steps of the investigation and the resulting outcome at appropriate times.
...	

47. The relevant obligation from Lumo Energy's gas retail licence is clause 15.1 which states, in part:

As well as complying with this licence, the Licensee must comply with all applicable provisions of... the *Energy Retail Code*...

48. The relevant obligations from the code are:

- (a) Clause 116(1) of the code which stated, in part:

Restrictions on de-energisation

Despite any other provisions of this Division but subject to subclauses (2), (3) and (4), a *retailer* must not arrange for the *de-energisation* of a *customer's* premises to occur:

...

- (b) where the customer has made a complaint, directly related to the reason for the proposed de-energisation, to the retailer under the retailer's standard complaints and dispute resolution procedures, and the complaint remains unresolved;

Decision

49. Lumo Energy is required to comply with the statutory licence condition.
50. Lumo Energy disconnected the gas supply to Customer G's premises at 8:40am on 26 March 2018.
51. Lumo Energy was required to comply with the code as a condition of its contract with Customer G.
52. Lumo Energy arranged for the disconnection of the gas supply to Customer G's premises in circumstances where Customer G had made a complaint directly related to the reason for the proposed disconnection, under Lumo Energy's standard complaints and dispute resolution procedures, and the complaint remained unresolved.
53. Lumo Energy failed to comply with clause 116(1)(b) of the code.
54. Lumo Energy therefore failed to comply with the terms and conditions of the contract with Customer G that specified the circumstances in which the supply of gas to those premises may be disconnected.
55. Accordingly, Lumo Energy is required to make a payment of a prescribed amount to Customer G under the statutory licence condition in relation to the wrongful disconnection of the gas supply to Customer G's premises.
56. Customer G notified Lumo Energy of the disconnection of the gas supply to her premises in the telephone call of 3 April 2018. This was within 14 days of the disconnection. Therefore, the amount payable to Customer G by Lumo Energy is not subject to the cap specified in section 48A(1A) of the Act.

Reasons

Lumo Energy was required to comply with the code

57. Lumo Energy's contract with Customer G included terms and conditions which specified the circumstances in which the supply of gas to her premises may be disconnected. The terms and conditions stated, in part, that "Subject to us satisfying the requirements in the Regulatory Requirements, we may arrange for disconnection of your premises...". The contract defined "Regulatory Requirements" to mean "...in Victoria: the Energy Retail Code published by the Essential Services Commission...".
58. The commission therefore considers that Lumo Energy was required to comply with the provisions of the code specifying the circumstances in which the supply of gas to Customer G's premises could be disconnected as a condition of its contract with Customer G.

Lumo Energy failed to comply with clause 116(1)(b) of the code

59. Clause 116(1)(b) of the code prevents a retailer from arranging the disconnection of a customer's premises in circumstances where the customer has made a complaint directly related to the reason for the proposed disconnection, under the retailer's standard complaints and dispute resolution procedures, and the complaint remains unresolved.
60. Customer G's complaint made via the ombudsman to Lumo Energy related to whether there was a valid contract between Customer G and Lumo Energy, and whether the correct rates and concessions had been applied to her bills. Customer G had refused to pay the amounts that Lumo Energy contended were owed because she disputed the existence of a contract with Lumo Energy and disputed the amounts of the bills.
61. Lumo Energy arranged for the disconnection of the gas supply to Customer G's premises due to non-payment of bills.
62. The commission therefore considers that Customer G's complaint was directly related to the reason for the proposed disconnection.
63. Lumo Energy's Complaint and Dispute Resolution Policy (complaint policy) stated, in part, that "...customers or prospective customers may lodge a complaint about Lumo Energy with the relevant Ombudsman".
64. The commission therefore considers that Customer G's complaint was made under Lumo Energy's standard complaints and dispute resolution procedures,

65. Lumo Energy's complaint policy also stated, in part, that "Employees will...take proactive steps to investigate and resolve..." complaints "at the first point of contact where feasible." and that "Customers should be informed of all steps of the investigation and the resulting outcome at appropriate times." Further, that "Employees will escalate the complaint where the customer requests it, or if the customer remains dissatisfied with the resolution offered at their first point of contact. Employees will provide contact details of the relevant Ombudsman as required."
66. Although Lumo Energy did investigate part of Customer G's complaint, namely whether she had been lawfully signed up as a customer with Lumo Energy, there was no information made available to the commission to indicate that Lumo Energy investigated the second aspect of Customer G's complaint regarding whether the correct rates and concessions had been applied to her bills. Customer G had informed Lumo Energy in the phone call of 6 November 2017, that she had a concession card valid until March 2019.
67. The email sent by Lumo Energy to Customer G dated 23 January 2018 did not inform her of the steps of their investigation or the resulting outcome, or advise Customer G as to how she could escalate her complaint, including by providing information in relation to her ability to take the matter up again with the ombudsman.
68. If Lumo Energy was unable to obtain all of the information it required from Customer G due to an absence of cooperation or an inability to contact her, it should have conducted its investigation on the information available to it and informed Customer G of this in the email of 23 January 2018.
69. The commission considers that Lumo Energy did not deal with Customer G's complaint in accordance with its complaints policy and therefore Customer G's complaint remained unresolved at the time that Lumo Energy arranged for the disconnection.

Calculation of prescribed payment amount

70. Section 48A(1A) provides that if a customer does not notify a retailer of the disconnection within 14 days, the maximum payment is the prescribed capped amount.
71. Lumo Energy have submitted that the amount of any wrongful disconnection payment should be limited to the prescribed capped amount because their capacity to reconnect Customer G's gas supply immediately was "hindered by her unavailability to continue with the discussion required for reconnecting the supply".
72. The Act allows for two circumstances when calculating a wrongful disconnection payment amount. The first is where a customer does not notify the retailer of the disconnection within

14 days. In the first circumstance the payment amount will be subject to a legislative cap, and in the second it will not.

73. The requirement for compensation to be capped under section 48A(1) of the Act is that Customer G did not notify Lumo Energy of the disconnection within 14 days. The Act does not contemplate limiting the amount of the wrongful disconnection payment in any other circumstance.
74. Customer G did notify Lumo Energy of the disconnection of the gas supply to her premises within 14 days of the disconnection. Lumo Energy accepts that fact in its submissions.
75. The commission therefore considers that the prescribed payment amount is calculated from the time of disconnection until the time of reconnection. It is not subject to the cap specified in section 48A(1A) of the Act.

Enforcement

76. On the basis of the information available, the commission considers that Lumo Energy was in breach of a condition of its gas retail licence under 48A(1) of the Act and was required to make a payment of a prescribed amount of \$18,757 to Customer G as soon as practicable after the reconnection of the gas supply to Customer G's premises on 2 May 2018.
77. There is no information available to the commission to confirm that Lumo Energy has made this payment. Lumo Energy may therefore have breached a condition of its gas retail licence by failing to make the payment to Customer G as soon as practicable after the reconnection.
78. Lumo Energy should rectify the breach by making the payment and advise the commission in writing when the payment has been made.
79. If Lumo Energy is unable to make payment, it should inform the commission in writing within five business days of receipt of this decision and reasons.
80. If the payment is not made within five business days of Lumo Energy receiving this decision and reasons, the commission may take enforcement action against Lumo Energy under Part 7 of the Essential Services Commission Act 2001 (Vic) in relation to a breach of section 48A(1) of the Act.

Other observations

Application of clause 29(3) of the code to wrongful disconnections

81. The ombudsman queried Lumo Energy's compliance with clause 29(3) of the code and its application to section 48A(1) of the Act. Given the commission's decision regarding Lumo Energy's non-compliance with clause 116(1)(b) of the code, it is not strictly necessary for the commission to deal with the clause 29(3) issue. However, to assist the ombudsman and retailers the commission provides the following comments.
82. Lumo Energy asserted that clause 29(3) alone does not interact with the disconnection provisions in the code. This assertion was based on the commission's observations regarding clause 33(3) of the code in its previous decision in the matter of Customer N and EnergyAustralia. In that decision, the commission noted that clause 33(3) is in Part 2, Division 4 headed "Customer retail contracts – billing" and is not a term or condition specifying the circumstances in which the supply of gas to premises may be disconnected. Lumo Energy argued that clause 29(3) falls under the same division as clause 33(3) and "therefore, does not place any obligation on a retailer in relation to a wrongful disconnection payment".
83. Clause 29(3) and 33(3) both fall under Part 2, Division 4 of the code, which concerns billing requirements for customer retail contracts. However, the obligations under these two clauses are separate and distinct. Clause 29(3) relates to billing disputes and prescribes the process retailers must follow if requested to review a bill by a customer. Clause 33(3) of the code relates to hardship customers or customers experiencing payment difficulties and requires a retailer to provide certain information regarding the availability of government funded energy rebates, concessions and relief schemes to those identified customers. These clauses are not strictly relevant to the application of section 48A(1) of the Act.
84. However, Lumo Energy appear to have assumed that clause 29(3) will only be relevant to the application of section 48A(1) if it itself is a term or condition of the contract that specified the circumstances in which the supply of gas to those premises may be disconnected. The commission notes that a billing dispute might form the basis of a complaint that would be relevant to the application of clause 116(1)(b), and so clause 29(3) may interact in its operation with clause 116(1)(b) of the code.

Approach to complaints when a customer does not engage

85. This is the first disconnection referral where the commission has had cause to consider the approach adopted by retailers where a customer has made a complaint and subsequently fails to actively engage in the complaints process. The commission recognises the challenges presented to retailers by those circumstances. In those circumstances, retailers should resolve complaints in good faith on the basis of the materials available to them whilst adhering to their standard complaints and dispute resolution procedures.

Complaints arising from door-to-door sales

86. Customer G alleged that the Lumo Energy agent that came to her door made certain representations when signing her up to a Lumo Energy account, including that Customer G could cancel the account within a week and that the transfer of the account would not go through as she was not the authorised tenant on the existing bills for the premises. The commission takes allegations of this nature seriously and notes the significant issues associated with door-to-door sales in the energy market, particularly in relation to compliance with the explicit informed consent provisions under clause 3C of the code.
87. Lumo Energy submitted that it reviewed the sign-up call and was satisfied that it had obtained explicit informed consent from Customer G to enter into a contract with Lumo Energy. The commission requested that Lumo Energy provide a copy of the sign-up call recording in its submissions, but Lumo Energy were unable to locate this call. Clause 3D of the code relevantly provided that a retailer is required to retain a record of a customer's explicit informed consent for at least two years. At the time of the ombudsman's referral, the two year period had expired therefore there was no requirement for Lumo Energy to retain a record of Customer G's explicit informed consent.
88. The commission has no information available regarding Lumo Energy's compliance with the code when signing up Customer G. However, as Customer G's complaint concerned her belief that she did not have an account with Lumo Energy, the commission considered it may have been prudent for Lumo Energy to retain a record of Customer G's explicit informed consent for a longer period than the two year requirement in this instance until the complaint and dispute resolution processes had been finalised.